

**BETWEEN: Public Prosecutor**

**AND:**

- 1. Samuel Bule Molsir**
- 2. David Assial**
- 3. John Bule**
- 4. Andrew Irmaneng**

**Defendants**

*Date:* 17 June 2020  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr T. Karae for Public Prosecutor  
Ms K. Karu for the Defendants

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**SENTENCE**

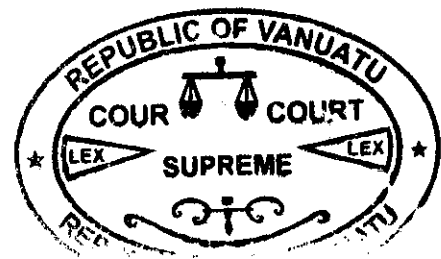
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**A. Introduction**

1. The defendants are variously charged as follows:

1. Samuel Bule Molsir:

- Sexual intercourse without consent (digital penetration) – maximum penalty life imprisonment;
- Robbery - maximum penalty 25 years imprisonment;
- Intentional assault causing permanent harm (Peter Walker) - maximum penalty 10 years imprisonment;



- Intentional assault causing permanent harm (Jean Truell) - maximum penalty 10 years imprisonment;
- Intentional assault causing permanent harm (Geoffrey Woolford) - maximum penalty 10 years imprisonment;
- Criminal trespass - maximum penalty 1 year imprisonment; and
- Theft - maximum penalty 12 years imprisonment.

2. David Assial:

- Criminal trespass - maximum penalty 1 year imprisonment; and
- Theft - maximum penalty 12 years imprisonment.

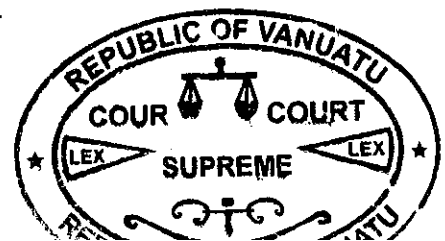
3. John Bule:

- Criminal trespass - maximum penalty 1 year imprisonment;
- Theft - maximum penalty 12 years imprisonment; and
- Theft - maximum penalty 12 years imprisonment.

4. Andrew Irmaneng:

- Sexual intercourse without consent (penile penetration) – maximum penalty life imprisonment;
- Robbery - maximum penalty 25 years imprisonment;
- Intentional assault causing permanent harm (Geoffrey Woolford) - maximum penalty 10 years imprisonment;
- Criminal trespass - maximum penalty 1 year imprisonment; and
- Theft - maximum penalty 12 years imprisonment.

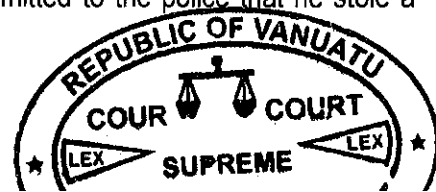
2. At plea day in the Supreme Court on 19 May 2020 each defendant pleaded guilty to the charges he faced. The Summary of Facts was accepted as being true and correct. Ms Karu confirmed that all the pleas were in accordance with her instructions. The defendants were accordingly convicted as charged on their own pleas and the admitted facts.
3. This case involves truly barbaric treatment of innocent, unsuspecting members of the community, by a group of four young men acting together, with permanent consequences flowing for the complainants. To categorise the offending as serious is simply inadequate. This must be one of the worst examples of unprovoked, gratuitous violence in Vanuatu's history. It is to Ms Truell's (the most affected complainant) credit that she recognises that the conduct of these particular defendants is atypical for Ni-Vanuatu.



4. The offending calls for condign sentences to be imposed on the two main offenders, Samuel Molsir and Andrew Irmaneng. The lesser offending by the two younger participants, John Bule and David Assial, falls into a different category of criminal culpability - they need to be sentenced on a different basis. I note that Mr Walker has recognised this and suggested the two younger offenders be given a second chance.

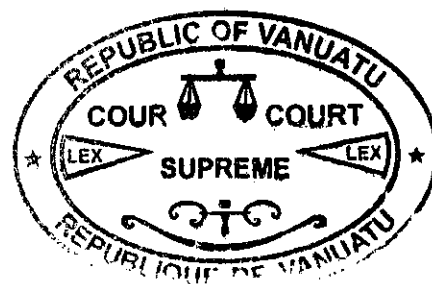
B. Facts

5. Mr Peter Walker is a relatively well-known personality in Port Vila. He owns what might be termed a holiday house in the bush at Teouma – it is not his main residence. In early 2019, the house had been the subject of a break-in with valuable property being removed. That conduct was repeated in late August 2019. Although not the subject of criminal charges, Samuel Molsir, John Bule and Andrew Irmaneng admitted some involvement in those matters. Their prior knowledge of the house is relevant.
6. Mr Walker's cousins, Mr Geoffrey Woolford and his wife Ms Jean Truell, were in Vanuatu in August 2019 to holiday, stay with family members, and celebrate Mr Woolford's 74<sup>th</sup> birthday. The three of them went to Mr Walker's house at Teouma in the afternoon of 30 August 2019, intending to stay the weekend. After they had tidied up after the most recent break-in, they were having a pleasant social time in a very special setting for them and preparing their evening BBQ meal.
7. That day, Samuel Molsir, his younger brother John Bule and his brother-in-law Andrew Irmaneng had decided to go out and look for prawns in the Teouma River, which they planned to roast and eat. As they were leaving a friend of theirs, David Assial, asked if he could accompany them. They spent the day as they had planned, finding prawns and hunting birds; but they ended up in a remote area where the way home was uncertain. Samuel Molsir then suggested they take a short cut that he knew which would lead them back to Etas, and their homes. The agreed shortcut took them right past Mr Walker's house, which Samuel Molsir knew.
8. When the four of them drew close to Mr Walker's house, Samuel Molsir suggested that they steal from the house and rob the people there. David Assial spoke up against that plan, and John Bule was also reluctant. However, both were frightened of Samuel Molsir who was insistent; and as they did not know their way home, they felt obligated to stay together. They all waited in hiding until it got darker; and then at around 6.30pm Samuel Molsir and Andrew Irmaneng armed themselves with Navinu branches as weapons. John Bule and David Assial remained hiding in the trees near to Mr Walker's house. All four had put on masks/balaclavas.
9. Samuel Molsir and Andrew Irmaneng then approached the seated occupants from behind. They were shouting: "Where is the money? Where is the money?" Samuel Molsir knocked Mr Walker unconscious with one blow, of the branch he carried, to Mr Walker's head. Andrew Irmaneng struck Mr Woolford twice to his head from behind, and also knocked him unconscious. Despite that he continued to strike Mr Woolford with the branch; Samuel Molsir joined in. Next, Samuel Molsir attacked Ms Truell. She attempted to stave him off using the plastic chair she had been sitting on, but Samuel Molsir smashed that with his branch before setting about Ms Truell's head and torso. She too was knocked unconscious after a time.
10. When all three complainants had been knocked unconscious, the four defendants went into the house and searched for items to steal. Samuel Molsir admitted to the police that he stole a



phone, VT 3,000 cash and 4 bottles of Tusker beer. Andrew Irmaneng admitted that he stole a small bag, a water bottle, a rain coat, a solar light and a pair of red trousers. John Bule admitted stealing a single mattress, a camera and a pair of shoes. David Assial admitted stealing a phone, a power bank, VT 10,000 cash and NZ\$ 20 cash.

11. Next, Samuel Molsir grabbed Ms Truell by her legs and dragged her out from the veranda to a nearby bush some 30 metres away. He ripped off her jacket and jeans. At this point Ms Truell was falling in and out of consciousness. She was aware her underpants were removed and felt a finger inserted into her vagina. Samuel Molsir admitted to the police that he had done that.
12. Ms Truell was also aware that one of the assailants next penetrated her vagina with his penis. Andrew Irmaneng admitted to the police that he had been spurred on to do this by Samuel Molsir, and that he had then raped Ms Truell. Ms Truell tried to resist but she was too weakened by the earlier assaults on her and she was in real pain from her injuries. She kept saying: "Please stop. I am too old for this. Please stop." Her next recollection was Mr Walker and Mr Woolford lifting her and carrying her back onto the veranda.
13. The defendants departed the scene, taking with them the stolen property and all the torches present. They left the complainants in a very poor state, Ms Truell in particular bleeding heavily from her numerous injuries. The three complainants were unable to use their cell phones, which had been taken; or drive to fetch assistance as the car keys had been interfered with. All stated their shoes had been removed during the incident. They settled in for the night, but Ms Truell advised she doubted that she would survive until morning unless she received treatment. As a result, Mr Walker summoned the strength, and bravery, to go for assistance, and he returned not too long after with a group of soldiers. All three complainants were then taken to Port Vila Central Hospital.
14. Ms Truell was 62 years old. She was first examined at Port Vila Central Hospital in relation to the allegation of sexual assaults. She was found to have numerous bruises and abrasions at her vaginal wall and cervix.
15. Ms Truell was medevacked to Wellington, New Zealand the following day – as was Mr Woolford. She remained in hospital there for three weeks, recuperating. Her head injuries are described as skull fractures, causing fatigue, memory loss, loss of balance, cognitive confusion and sleep disruption; multiple fractures to her left eye socket, multiple fractures of her jaw and severe facial bruising. Additionally, she had fractured ribs, hand fractures, finger fractures and a laceration of her spleen. Her dominant left hand is permanently disabled.
16. Mr Woolford, at the time almost 74 years old, also suffered from multiple head and face fractures, which are said to cause significant fatigue, memory loss, loss of balance, fainting and cognitive confusion. He ended up with over 40 stitches in his head. He too had a broken jaw, a fractured left hand and a small non-life threatening brain bleed. He now sleeps several hours a day. He remained at Wellington Hospital for 8 days prior to being discharged.
17. Mr Walker, aged 60 years, was medevacked to Brisbane Hospital after several days at Port Vila Central Hospital. He too had significant head injuries as well as a broken jaw in 3 places. He had several damaged teeth.



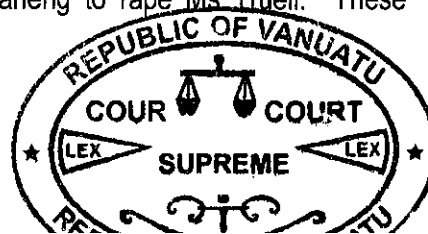
C. Sentence Start Point

18. There are numerous aggravating features that need to be taken into account in setting the appropriate sentence starting points:

- The fact that four defendants were acting in concert. Although I accept two played a lesser role, their mere presence aggravates matters from a complainant's perspective and would have emboldened the two more culpable offenders;
- The multitude of offending, in terms of the number of charges as well as the types of charges;
- The sheer extent and brazenness of the offending which occurred at the holiday home of one of the complainants at night time;
- The age differential between the youthful, fit offenders and the much older, less fit complainants. The offenders ranged from 14 to 22, with the two eldest aged 21 and 22 leading the way. The complainants ranged from 74 to 60;
- The offending involved three innocent and vulnerable complainants;
- The effects on the complainants and their family members – physically, emotionally and financially, as set out in the complainant extensive impact statements, some of which were read out in Court;
- The violence meted out was inflicted with weapons which were aimed at the heads of all three complainants, the most vulnerable part of the body. Numerous serious injuries resulted to all three complainants;
- The violence was unprovoked; and it was calculated and planned;
- The sexual assaults were preceded by extensive violence to Ms Truell, effectively removing all prospects of resistance. One or both the sexual assaults caused bruising and abrasions to the vaginal wall and cervix;
- The sexual intercourse was without protection, exposing the complainant to sexually transmitted disease;
- Having trespassed onto the property, assaulted all the complainants, sexually abused one of them, robbed and stolen from all three of them, the offenders then left the complainants in extremis - without transport, without footwear, without their phones to be able to call for assistance, and without lighting to be able to see at night to get assistance. This no doubt assisted in their escaping the scene, but it also caused at least one of the complainants to fear for her life; and

19. There are no mitigating aspects to the offending.

20. Samuel Molsir was the undoubted leader of the group. The others were in fear of him. He suggested the robbery/theft; and he coerced Andrew Irmaneng to rape Ms Truell. These



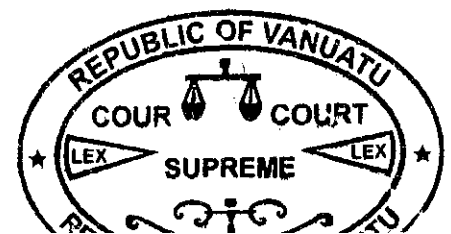
aspects of his conduct go but a small way to reduce the criminal culpability of the others, but demonstrate that he is the most culpable. Clearly Andrew Irmaneng is a close second.

21. The sentence start points for each of the offenders, on a global basis taking all their individual offending into account, is accordingly set at:

- |                     |                               |
|---------------------|-------------------------------|
| 1. Samuel Molsir:   | 17 years imprisonment         |
| 2. David Assial:    | 4 years imprisonment          |
| 3. John Bule:       | 4 years 6 months imprisonment |
| 4. Andrew Irmaneng: | 16 years imprisonment.        |

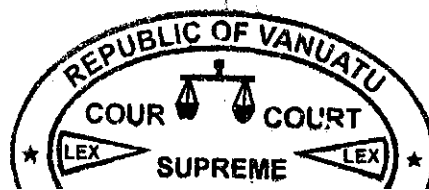
D. Personal Factors

22. In respect of all four defendants, it is accepted that an attempt was made to conduct a custom reconciliation ceremony. However, Mr Walker declined to take part in such. The mitigation for the defendants' stated intent is taken into account.
23. Samuel Molsir was 22 years old at the time of the offending; he is now 23. He is unemployed, residing with his de facto partner, who is also unemployed, and their 3-year old child. He gardens and farms to support the family; and occasionally engages in small construction works. His parents are the income-earners.
24. He has previous criminal convictions when aged 20 for unlawful entry, theft and arson. He was dealt with in relation to those matters in 2017 by the imposition of 3 years 9 months imprisonment, which sentence was wholly suspended for 2 years. This warrants an uplift of the sentence start point by 6 months.
25. He explained to the PSR writer that he would not have offended in this manner if not high on marijuana at the time. He claims to be remorseful and promises to not re-offend.
26. For his personal factors I increase the sentence start point by 3 months.
27. Andrew Irmaneng was 21 years of age at the time of the offending. He resides with his parents and is unemployed.
28. He claims to have offended due to peer pressure and due to having consumed cannabis prior to the offending.
29. He has no previous convictions. It was said that he co-operated with the police inquiries. He is said to be remorseful by counsel – the PSR writer noted that he was regretful; but stated that he "...showed no remorse to his victims". This lack of remorse is echoed in Mr Walker's VIS where he relates of post-offending contact. This entailed Andrew Irmaneng working alongside Mr Walker until his arrest, without showing any signs of remorse or insight into the effects the offending had on Mr Walker and his family.
30. For his personal factors I reduce the sentence start point by 6 months.



## E. Youth

31. Due to John Bule's age, section 54(1) of the Penal Code has application. That requires the Court to sentence a person under the age of 16 years to imprisonment only if there is no other appropriate method of punishment. Further, if the ultimate sanction of imprisonment is imposed, the Court is obliged to set out the reasons for adopting that course.
32. Vanuatu is a signatory to the Convention on the Rights of the Child. Article 37 of that Convention stipulates that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used as a measure of last resort and for the shortest appropriate period of time. The Convention also requires every child alleged to have infringed the criminal law to be treated in a manner which takes into account the "...desirability of promoting the child's reintegration and the child's assuming a constructive role in society".
33. The Courts have frequently stated that where young offenders are to be sentenced, the sentencing principles of reformation and rehabilitation should be the fore-most considerations, even when the offending, as here, can properly be regarded as very serious: *Heromanley v PP* [2010] VUCA 25 and *PP v Malkorkor* [2015] VUSC 147.
34. An added consideration is that there are currently no facilities for separately incarcerating young offenders in Vanuatu. I note that Article 37 of the Convention on the Rights of the Child sets out a presumption that every child deprived of his/her liberty shall be separated from adults. This is not currently possible in Vanuatu.
35. There are also numerous authorities dealing with the specific discounts available to young offenders. This relates to the scientifically established position that there are significant neurological differences between young persons and adults – and seemingly more so in the case of young males than young females. The New Zealand Court of Appeal authority of *Rolleston v R* [NZCA] 611 expounds on this.
36. John Bule was only 14 years of age at the time of the offending; he is now 15. He no longer attends school, but resides at home with his parents. He is unemployed, but does some gardening. He maintains he was verbally and physically threatened to comply with his older brother's instructions, and offended due to peer pressure.
37. He has no previous convictions. He claims to be remorseful and that he has learnt a lesson from his involvement in this matter. He promises to not re-offend.
38. He was held in custody for 50 days following arrest prior to being granted bail.
39. For his personal factors I reduce the sentence start point by 24 months.
40. Some of the above relating to Youth also affects David Assial.
41. David Assial was 18 years old at the time of the offending. He is still a student, living with his parents. He is said to be helpful in the house, and supportive to his parents. He is said to be an active member of his church.
42. He has no previous convictions. He is also said to be remorseful and has promised to not re-offend.



43. He too was in custody for 50 days post arrest prior to being granted bail.
44. For his personal factors I reduce the sentence start point by 15 months.

F. Pleas

45. In this particular case, the pleas of guilty were entered at the first available opportunity. That spared the complainants the stress of having to re-live their ordeal when giving evidence. It was an acceptance by each of the defendants of their wrong-doing and could also indicate their remorse for their actions. The maximum discount available in Vanuatu for prompt pleas is a discount of up to one-third from the sentence. I am satisfied that the full available discount is appropriate for each of these defendants.

G. End Sentence

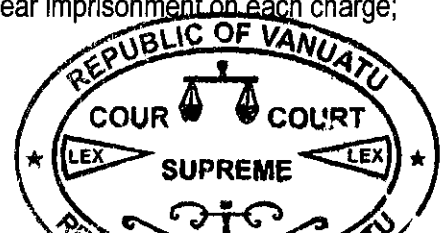
46. The defendants Samuel Molsir and Andrew Irmaneng have been in custody for some time pending the completion of this matter. Accordingly, their sentences need to be back-dated to commence at the appropriate date to preserve their parole rights.
47. It is inappropriate to suspend any part of the sentence in respect of Samuel Molsir and Andrew Irmaneng bearing in mind the seriousness of their offending and the predominant purposes of sentence that have application to their criminal acts – namely deterrence, holding the offender accountable for his conduct and protection of the community.
48. The situation is quite different for John Bule and David Assial. Their significantly lesser involvement, their youth, and their prospects of rehabilitation, coupled with the different sentencing objectives when dealing with young offenders, as earlier referred to, dictates that both their sentences be suspended.
49. Accordingly, the end sentences that I impose are as follows:

1. Samuel Molsir:

- For the offences of sexual intercourse without consent (digital penetration), robbery, and intentional assault causing permanent harm (x 3): 11 years 4 months imprisonment on each charge;
- For the offences of criminal trespass and theft: 1 year imprisonment on each charge;
- The sentences are to all run concurrently, and to commence from 1 January 2020.

4. Andrew Irmaneng:

- For the offences of sexual intercourse without consent (penile penetration), robbery and intentional assault causing permanent harm: 10 years 4 months imprisonment on each charge;
- For the offences of criminal trespass and theft: 1 year imprisonment on each charge;





- The sentences are all to run concurrently and to commence from 1 January 2020.

2. David Assial:

- For the offences of criminal trespass and theft:
  - 22 months imprisonment on each charge suspended for 3 years;
  - 2 years supervision with the conditions that he attend and satisfactorily complete programmes dealing with anger management awareness, juvenile workshop and Jois blo gud lyfe; and
  - 200 hours of community service in his residential area and within his direct community.
- The sentences are all to run concurrently, and to commence from 28 May 2020.

3. John Bule:

- For the offences of criminal trespass and theft (x 2):
  - 20 months imprisonment on each charge' suspended for 3 years;
  - 2 years supervision with the conditions that he attend and satisfactorily complete programmes dealing with anger management awareness, juvenile workshop and Jois blo gud lyfe; and
  - 160 hours of community service in his residential area and within his direct community.
- The sentences are all to run concurrently, and to commence from 28 May 2020.

50. David Assial and John Bule need to understand that this is their second chance. They need to remain offence free for 3 years from today, or they can be incarcerated for the periods of their respective sentences. The sentence of supervision is intended to assist them to remain offence free.

51. Each of the defendants has 14 days to appeal their sentences if he disagrees with it.

**Dated at Port Vila this 17th day of June 2020**

**BY THE COURT**

*Gandra Ull*  
Justice G.A. Andrée Wiltens

